

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:
	:
of	:
	:
BRIDGEHAMPTON INVESTORS CORP.	:
DETERMINATION	:
	:
for Revision of a Determination or for Refund	:
of Tax on Gains Derived from Certain Real	:
Property Transfers under Article 31-B of the	:
Tax Law.	:

Petitioner, Bridgehampton Investors Corp., c/o S. Greene, 20 Babbitt Road, Bedford, New York 10507, filed a petition for revision of a determination or for refund of tax on gains derived from certain real property transfers under Article 31-B of the Tax Law (File No. 802109).

A hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 11, 1987 at 9:15 A.M., with all briefs to be submitted by August 27, 1987. Petitioner appeared by Steven C. Greene, Esq. The Audit Division appeared by John P. Dugan, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether the value of certain real property transferred by petitioner was less than \$1,000,000.00, thus entitling petitioner to exemption from the tax imposed under Tax Law Article 31-B.

FINDINGS OF FACT

1. Petitioner, Bridgehampton Investors Corp., operated an oceanfront beach and tennis club, located in Bridgehampton, New York and known as the Bridgehampton Racquet and Surf Club (the "Club"). The Club consisted of land area totalling 12 acres, and included 14 tennis courts, a large swimming pool, the clubhouse building, cabanas, various other buildings and equipment. The Club was built in 1962 and has been operated continuously since then as a beach

and tennis club.

2. Petitioner purchased the Club in 1972 at a purchase price of \$450,000.00. From the time of petitioner's purchase of the Club in 1972 until its sale, petitioner maintained the facilities and made certain improvements to the Club.

3. In or about March of 1984, petitioner entered into a contract with one Edward S. Gordon for the sale of the Club by petitioner to Mr. Gordon. This contract called for a selling price of \$3,050,000.00, and included the following clause, relevant hereto:

"The purchase price is solely for the real property, special use permit for the club and the buildings and improvements thereon, which constitute the Premises; no separate portion of the purchase price is attributable to the personal property included in this sale."

4. Requisite transferor and transferee questionnaires under Tax Law Article 31-B ("gains tax") were filed in connection with the impending transfer of the Club, wherein petitioner sought exemption from the gains tax upon the assertion that the real estate being transferred had a value of less than \$1,000,000.00.

5. Petitioner's claim of exemption was based upon an appraisal of the premises prepared by one Peter Berger, a licensed real estate appraiser. This appraisal was based on the "replacement method", under which (in general) value is determined as the cost of replacement of any improvements (in this case the clubhouse, tennis courts, pool and incidental buildings) less accrued depreciation and obsolescence, if any, plus the value of the land. Mr. Berger's appraisal indicated a value for the property of \$983,000.00, more specifically allocated as \$449,000.00 for total improvements to the land and \$534,000.00 as the value of the land. The land was valued as to its potential use for residential real estate development.

6. The appraisal of the real estate on the basis of its potential for residential development was due to the fact that the land had been (re)zoned for use as residential land subsequent to the building and operation of the Club. As the result of such zoning reclassification, the Club is now operated under a special use permit, which use permit runs with the land. If the Club were to cease operation as a beach and tennis club, future use of the land would be limited to residential use only.

7. In response to the aforementioned transferee and transferor questionnaires, the Audit

Division issued a tentative assessment indicating gains tax would be payable on the transfer in the amount of \$249,884.33, calculated as follows:

selling price		\$3,050,000.00
less: original purchase price	450,000.00	
capital improvements	101,156. <u>65</u> ¹	551,156. <u>65</u>
gain	\$2,498,843.35	
tax rate	<u>.10</u>	
tax	\$ 249,884. <u>33</u>	

8. Closing on the premises was held in November of 1984, in connection with which petitioner paid the amount of the tentative assessment (\$249,884.33) under protest. On November 26, 1984, petitioner filed a claim for refund with the Audit Division seeking refund of the gains tax paid under protest.

9. By a letter dated May 7, 1985, the Audit Division denied petitioner's claim for refund. Petitioner, in turn, timely commenced this proceeding to contest the denial of its claim for refund.

10. The Club is still operated by the purchaser as a beach and tennis club. The purchaser, Mr. Gordon, was (and is) one of the Club's members. The ultimate sale price herein was arrived at by the process of negotiation between Mr. Gordon and petitioner.

SUMMARY OF PETITIONER'S POSITION

Petitioner asserts that the aforementioned appraisal established the value of the real estate transferred as being less than \$1,000,000.00, and hence maintains the transaction was exempt

¹Petitioner claimed capital improvements totalling \$107,560.65, which amount included \$6,404.00 of painting expense. This amount was disallowed by the Audit Division as in the nature of maintenance, thus leaving allowable capital improvements of \$101,156.65.

from the imposition of gains tax. Petitioner argues, in essence, that the value paid by the purchaser in excess of the appraised value of the real estate is attributable to good will and/or going concern value. Petitioner maintains such excess value reflects years of profitable operation, the existence of a membership clientele, and also the value of being the only operating beach club in the area.

CONCLUSIONS OF LAW

A. That Tax Law § 1441, which became effective March 28, 1983, imposes a tax at the rate of 10 percent upon gains derived from the transfer of real property within New York State. However, Tax Law § 1443.1 provides that no tax shall be imposed if the consideration is less than \$1,000,000.00.

B. That Tax Law § 1440 defines certain terms contained in Article 31-B of the Tax Law, including the following:

"1. (a) 'consideration'...

* * *

(c) In the case of a transfer which includes other assets which are in addition to real property or an interest therein and for which there is no reasonable apportionment of the consideration for such real property or interest, consideration means that portion of the total consideration which represents the fair market value of such real property or interest....

* * *

4. 'Interest' when used in connection with real property includes, but is not limited to, title in fee, a leasehold interest, a beneficial interest, an encumbrance, a transfer of development rights or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property....

* * *

6. 'Real property' means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon and leaseholds, which are located in whole or in part within the state...."

C. That it is evident that the purchaser in the subject transaction sought to purchase an

operating beach and tennis club, and that the price paid for the Club was arrived at through the process of negotiations with petitioner. Petitioner, in turn, seeks acceptance of an appraisal of the raw land, together with the replacement value of the improvements thereon, as the appropriate measure of consideration for gains tax purposes. Such appraisal, however, does not measure the value of what was bargained for and transferred, to wit an operating beach and tennis club. By analogous example, this situation is not unlike the purchase of an occupied residential apartment building, wherein the consideration would be equal to the bargained for, arms-length fair market value of the premises transferred, and not simply the appraised replacement cost of the physical building plus the value of the underlying land. It is noted, further, that the parties' contract of sale specifically allocated the entire purchase price to the real property, special use permit (running with the land) and buildings and improvements (see Finding of Fact "3"). Accordingly, in the absence of any other evidence as to the fair market value of the premises transferred by petitioner, it is concluded that the value of the property transferred, for gains tax purposes, was the \$3,050,000.00 purchase price negotiated between petitioner and the purchaser.

E. That the petition of Bridgehampton Investors Corp. is hereby denied and the Audit Division's denial of petitioner's claim for refund is sustained.

DATED: Albany, New York
November 19, 1987

ADMINISTRATIVE LAW JUDGE